

Message Text

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ORIGIN EB-07

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FM SECSTATE WASHDC

TO AMEMBASSY CANBERRA

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E.O. 11652: N/A

TAGS: EWWT, NR

SUBJECT: SHIPPING: PERFORMANCE CERTIFICATION OF
NAURU'S ENNA G.

1. NAURUAN REPRESENTATIVES (HONORARY CG CARLTON SKINNER, J.E. RATCLIFF, LEGAL COUNSEL, AND NORTH AMERICAN MARITIME AGENCY) HAVE DISCUSSED INFORMALLY WITH THE FEDERAL MARITIME COMMISSION (FMC) THE CERTIFICATION OF THE NAURU FLAG AND GOVERNMENT-OWNED 100 PLUS PASSENGER VESSEL, ENNA G., WHICH WOULD PERMIT THE VESSEL TO EMBARK PASSENGERS AT U.S. PORTS. TWO CERTIFICATES ARE INVOLVED -- CASUALTY AND PERFORMANCE. THE FMC BELIEVES THE NAURUAN GOVERNMENT WILL HAVE NO PROBLEM QUALIFYING FOR A CASUALTY CERTIFICATE, BUT AS A RESULT OF DISCUSSIONS THERE APPEAR TO BE DIFFICULTIES WITH RESPECT TO THE PERFORMANCE CERTIFICATE.

2. SECTION 3 OF PL 89-777 (46 U.S.C.817E) PROVIDES THAT NO PERSON IN THE U.S. SHALL ARRANGE, OFFER, ADVERTISE OR PROVIDE PASSAGE ON A VESSEL HAVING BERTH OR STATEROOM ACCOMMODATIONS FOR 40 OR MORE PASSENGERS, AND WHICH
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IS TO EMBARK PASSENGERS AT U.S. PORTS WITHOUT FIRST FILING

WITH THE FMC EVIDENCE OF FINANCIAL RESPONSIBILITY AS THE COMMISSION, BY R-LE OR REGULATION, MAY REQUIRE AND ACCEPT FOR INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION. FMC GENERAL ORDER 20 SETS FORTH THE RULES AND REGULATIONS PURSUANT THERETO AND REQUIRES, INTER ALIA, THAT SECURITIES AND ASSETS SUBMITTED AS EVIDENCE OF FINANCIAL RESPONSIBILITY BY APPLICANTS, GUARANTORS, INSURERES, ESCROW AGENTS AND OTHERS MUST BE PHYSICALLY LOCATED IN THE UNITED STATES TO MEET THEIR RESPONSIBILITIES. NO WAIVER THEREFOR IS PROVIDED BY THE COMMISSION.

3. NAURUAN REPRESENTATIVES WERE ADVISED OF THE ASSETS-IN-THE-UNITED STATES REQUIREMENT. THE FMC WAS ASKED TO ACCEPT A BOND OR INSURANCE OF A NAURUAN INSURANCE COMPANY OR A GUARANTY OF THE NAURUAN GOVT. NEITHER

APPEARED TO BE AN ACCEPTABLE SOLUTION IN THAT IN THE FIRST INSTANCE THERE IS NO NAURUAN INSURANCE COMPANY WITH ASSETS IN THE U.S. AND, IN THE SECOND, THE NAURUAN GOVT WOULD HAVE TO ESTABLISH A TRUST FUND IN THE U.S. WITH SUFFICIENT FUNDS TO MEET ITS COMMITMENTS. THIS WOULD BE A LENGTHY PROCEDURE AND WOULD HAVE TO BE ACCEPTABLE TO NOT ONLY THE NAURUAN GOVT, BUT ALSO THE FMC AND THE TRUSTEES. IN AN EFFORT TO BE OF ASSISTANCE, THE FMC STAFF SUGGESTED THAT THE NAURUAN GOVT OBTAIN A SURETY BOND, AND THE APPLICABLE DEPARTMENT OF THE TREASURY LIST OF "SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS" WAS PROVIDED.

4. QUESTION OF WAIVER ON BASIS OF SOVEREIGN IMMUNITY HAS BEEN RAISED ALSO. FMC POSITION IS THAT SINCE PUBLIC LAW 89-777 WAS PASSED TO PROTECT PASSENGERS, THE NAURUAN GOVT, IF CERTIFIED BY THE COMMISSION, IS SUBJECT TO SUIT FOR PERSONAL INJURY AND DEATH CLAIMS AND FOR REFUND OF FARES IN THE EVENT THAT ANY VOYAGES OR CRUISES, IN WHOLE OR IN PART, ARE NOT PERFORMED. IN FACT, THE APPLICATION THEREFOR REQUIRES APPLICANT TO GIVE THE NAME AND ADDRESS OF ITS UNITED STATES AGENT OR OTHER PERSON AUTHORIZED TO ACCEPT LEGAL SERVICE IN THE UNITED STATES.

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5. MATTER AS OF THIS DATE REMAINS UNRESOLVED. INFORMATION THEREON IS PROVIDED EMBASSY IN LIGHT OF EXPECTED VISIT TO NAURU BY AMBASSADOR TO PRESENT CREDENTIALS AND POSSIBILITY NAURUAN OFFICIALS MAY TAKE OPPORTUNITY OFFERED BY OCCASION TO RAISE MATTER. KISSINGER

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